REMARKS

The Amendments

The claims are amended to address the claim objection and the 35 U.S.C. §112 rejection. These amendments do not narrow the scope of the claims. Support for new claim 21 is found in the disclosure at page 4, paragraph [0013], for example.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Objection to the Specification

The specification is objected to on the grounds that it does not define the terms "phosphate", "CVD" or "PVD" used in the claims. Applicants respectfully submit that the meaning of these terms are well known to one of ordinary skill in the art and, therefore, it is not necessary to further define them in the disclosure. "A patent need not teach, and preferably omits, what is well known in the art," see, e.g., Spectra-Physics, Inc. v. Coherent, Inc., 827 F.2d 1524, 1534, 3 USPQ2d 1737, 1743 (Fed. Cir. 1987). See the definition of the terms "phosphate" and "CVD" (Chemical Vapor Deposition) in the attached excerpts from Kirk-Othmer, Concise Encyclopedia of Chemical Technology (1985). See the definition of "PVD" (Physical Vapor Deposition) in the attached on-line ChemiCool and Free Dictionary excerpts. In the context in which they are used in the claims, it would be clear to one of ordinary skill in the art that these well-known deposition techniques are referred to since the claims relate to providing a coating layer on a surface. In light of the context in which they are used, the meaning of these terms in the claims would be clear to one of ordinary skill in the art. Thus, the claims are proper.

The Objection to the Claims

The objection to claims 9-12 is rendered moot by the above amendment correcting the obvious error therein.

The Rejection under 35 U.S.C. §112, second paragraph

The rejection of claims 1-7 and 13-20 under 35 U.S.C. §112, second paragraph, is believed to be rendered moot by the above amendments to claims 1 and 18. Claim 1 is amended to clarify that the "at least one" refers to each of the metal species, i.e., the layer (D) is comprised of at least one metal oxide, metal sulfide, etc.. The claim is further amended to make clear that the "metal" term modifies each of these terms. The context of the original language was believed to be clear on this, however, there should be no question now. The objected to language in claim 18 is removed, since it is unnecessary anyway. For the above reasons, it is urged that the rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

The Rejection under 35 U.S.C. §102

The rejection of claims 1-20 under 35 U.S.C. §102, as being anticipated by Schoen (US Publication No. 2002/0192448; now issued as U.S. Patent No. 6,884,289) is respectfully traversed.

Applicants respectfully submit that Schoen does not disclose a specific embodiment – as required for anticipation – of an interference pigment having: "(D) an absorbent layer having a layer thickness of 1 – 100 nm, which comprises at least one: metal oxide, metal sulfide, metal telluride, metal selenide, metal lanthanide, metal phosphate, metal actinide, titanium oxynitride or titanium nitride, or a mixture of two or more of the above." The reference provides no specific embodiment or specific evidence to suggest that the reference inventors were in possession of a pigment having such a layer. In Schoen, the only pigments specifically identified have an absorbent layer (D) which is Prussian blue pigment (i.e., $K_4[Fe(CN_6]_3 \times H_2O$) and not any of the at least one materials required to be in applicants' layer (D). Schoen does disclose a broad generic list of possible pigment particles for layer (D) at col. 3, lines 19-34, which includes some particular metal oxides, metal sulfides and metal selenides, but such a mere broad generic disclosure without any specific direction as to the specific element necessary to provide an anticipation is not an anticipatory disclosure;

see, e.g., In re Kollman et al, 201 USPQ 193 (CCPA 1979). In other words, such a broad generic disclosure does not "describe" an embodiment therein in accordance with 35 U.S.C. §102. If such a reference were anticipatory, it would not be possible to prove nonobviousness for selection inventions within a generic disclosure. Such is not the state of the law. That Schoen does not provide any specific direction necessary for anticipation is additionally supported by the fact that Schoen does indicate preferred materials for the layer (D) at col. 3, lines 35-36, and in its Examples, but none of these materials fall within the definition of the materials recited for layer (D) of the instant claims. Accordingly, in the absence of any specific disclosure or direction towards an embodiment meeting all elements of the instant claims, there is no anticipation and the rejection under 35 U.S.C. §102 should be withdrawn.

Applicants also maintain their position that the absorbent in Schoen which comprises a covering of absorbent pigment particles having a particle size of 1-500 nm has a different meaning than the "layer" term in the instant claims. Based on the disclosure and the examples, it would be clear to one of ordinary skill in the art that the absorbent "layer" of the instant claims is a relatively homogenous layer rather than a collection of particles. See, e.g., the use of wet chemical methods in the examples which provide a solution to the pigment which is then dried. To one of ordinary skill in the art, this clearly provides a true layer, distinct from a "covering of absorbent pigment particles," as disclosed in Schoen. Although Schoen discusses that metal oxide layer are preferably applied by wet chemical methods (col. 3, lines 63-66), it does not disclose or suggest that the layer of absorbent pigment particles (D) is applied by wet chemical methods.

The distinction between the structures will also be reflected in the properties of the pigments having these distinct absorbent layers. The absorbent layer according to the claimed invention will exhibit an interference color at a specular angle. It will also provide an interference color and an absorption color of the absorbent layer outside the specular angle. See, e.g., paragraph [0009] on page 2 of the disclosure. The pigment particles layer of Schoen will each individually reflect light and, thus, will give differing reflection properties.

For the above reasons, applicants respectfully submit that the absorbent layer according to the claimed invention is distinct from the absorbent particles covering of Schoen. Thus, there is no anticipation and the rejection under 35 U.S.C. §102 should be withdrawn. Further, the claimed invention is not rendered obvious by Schoen. There would

be no motivation to replace the absorbent particles covering of Schoen with a non-particle absorbent layer since the particles feature is a principal characterizing feature of the Schoen invention.

Regarding new claim 21, applicants respectfully submit that this claim provides a further distinction from Schoen and is separately patentable, even if the above arguments are not found convincing. Schoen fails to disclose or suggest that use of a substrate which is a mixture of different substrate materials or a mixture of identical substrate materials with different particle sizes. There is no suggestion of any such materials in Schoen and therefore this claim is neither anticipated nor rendered obvious by the reference.

The Provisional Obviousness-type Double Patenting Rejection

The obviousness-type double patenting rejection of claims 1-20 over claims 1-11 of copending Ser. No. 10/128,521 is respectfully traversed.

It is noted that this application has issued as U.S. Patent No. 6,884,289. The patent contains claims 1-16 which have differences from the original claims published in 2002/0192448.

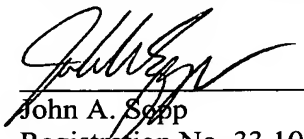
The distinctions made above in traversing the 35 U.S.C. §102 rejection are incorporated herein by reference. On that basis it is also urged that the claims of the patent supported do not render the current claims obvious variants.

Accordingly, the obviousness-type double patenting rejection should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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